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No. 82-_____

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In The

Supreme Court of the United States

October Term, 1982

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IOWA BEEF PROCESSORS, INC.,
A Corporation,
Petitioner,

vs.

UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL NO. 222, AFL-CIO,
Respondent.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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PETITION FOR CERTIORARI

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QUESTIONS PRESENTED

1. IS A REEXAMINATION OF THE *STEELWORKERS TRILOGY*[1] NECESSARY FOR PURPOSES OF A CLARIFICATION OF THE PERMISSIBLE BOUNDS OF AN ARBITRATOR'S AUTHORITY, IN TERMS OF WHEN AN ARBITRATOR'S DECISION WILL BE FOUND TO HAVE DRAWN ITS ESSENCE FROM A COLLECTIVE BARGAINING AGREEMENT?

DESIGNATION OF CORPORATE PARTIES

Information under Rule 28.1: Iowa Beef Processors, Inc. (IBP) is a wholly owned subsidiary of Occidental Petroleum Corporation. Its subsidiaries are as follows: Madison Foods, Inc.; Madison Lines, Inc.; Texas Amarillo Systems Company; Processed Beef Express, Inc.; IBP Service Center Corp.; IBP International, Inc.; IBP Leasing Corporation of Nebraska; IBP Properties, Inc.

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[1] *Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960), *Steelworkers v. Warrior Navigation Co.*, 363 U.S. 574 (1960), *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

TABLE OF CONTENTS

	Page
Questions Presented	i
Designations of Corporate Parties	i
Table of Authorities	iii
Opinions Below	2
Jurisdiction	2
Statutes Involved	2
Statement of the Case	3
Reasons for Granting the Writ (Argument)	9
Conclusion	11

APPENDICES

Eighth Circuit Opinion	A-1
Circuit Court Opinion	B-1
Arbitrator's Decision	C-1
Collective Bargaining Agreement	D-1

TABLE OF AUTHORITIES

Page

Steelworkers v. American Manufacturing Co., 363 U.S. 564, 80 S.Ct. 1343 (1960) ..... i, 9
Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 80 S.Ct. 1358 (1960) ..... i, 9
Steelworkers v. Warrior Navigation Co., 363 U.S. 574, 80 S.Ct. 1347 (1960) ..... i, 9

STATUTES

28 U.S.C. § 1254(1) 2
29 U.S.C. § 185 3
29 U.S.C. § 1254 2

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Petitioner, Iowa Beef Processors, Inc., respectfully requests that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on July 26, 1982.

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OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit is reported at 683 F.2d 283 (8th Cir. 1982), and is reproduced in the Appendices to this Petition as Appendix A.

The opinion of the District Court for the Northern District of Iowa, dated December 8, 1981, is not officially reported, but is reproduced in the Appendices as Appendix B.

The underlying Arbitrator's Decision is reproduced in the Appendices as Appendix C.

JURISDICTION

The Judgment of the Court of Appeals for the Eighth Circuit was entered on July 26, 1982 and is reproduced in Appendix A to this Petition. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The statutory provisions cited in this Petition are purely jurisdictional. They are 28 U.S.C. § 1254(1) and 29 U.S.C. § 185.

These statutes, in relevant part, state as follows:

28 U.S.C. § 1254:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By Writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

29 U.S.C. § 185:

> (a) Venue, amount, and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

The jurisdiction of the District Court below was invoked pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, when Respondent, United Food and Commercial Workers, Local No. 222 (hereinafter "Union") sought enforcement of an arbitration decision and award. Petitioner Iowa Beef Processors (hereinafter "IBP") answered and counterclaimed to have the decision and award set aside.

IBP operates a meatpacking facility in Dakota City, Nebraska. It has been signatory to collective bargaining agreements with the Union, covering employees at that facility since 1969. The collective bargaining agreement in dispute in this matter was in effect from May 1, 1978, through April 30, 1982. A copy of this Agreement is reproduced in the Appendix.

The arbitrator's decision at issue in this matter involves language in that Agreement concerning the weekly guarantee providing for 36 hours of pay to

each employee to be scheduled Monday through Friday, subject to exceptions for six weeks during the contract year. During the weeks that the exception operated, the 36-hour guarantee could be scheduled and calculated on a Tuesday through Saturday basis, as had been the practice under the predecessor agreement.

The language in question was set out at Article VIII, § 1 of the agreement (see Appendix D) and provided:

> Section 1: *The Company will provide each regular full time employee, other than maintenance employees, thirty-six (36) hours of pay in each week of employment at the employees' straight time hourly rate which is to be scheduled Monday through Friday inclusively. However, it is agreed that the Company may not for more than six (6) weeks during each contract year satisfy the guarantee by utilizing the days Tuesday through Saturday inclusively,* provided the Company shall post a notice to that effect not later than the last workday of the week preceding any week in which this is to be applicable. Regular full-time maintenance employees will be guaranteed thirty-six (36) hours of pay in five (5) days for each week of employment. Hours employees are absent for any reason will be deducted from such thirty-six (36) hours. The guarantee will also be reduced by eight (8) hours for each full shift on which the plant is unable to operate because of storm, flood, fire, explosion, power failure, strikes, or boycotts by any labor union or the National Farmers Organization or similar groups. (Emphasis Added).

The particular issue before the arbitrator concerned the proper application of the Tuesday through Saturday exceptions to the Monday through Friday scheduling requirement of the guarantee. It was IBP's position that this language allowed it to change normal Monday through Friday scheduling to Tuesday through Saturday for six weeks each contract year for each working group which consists of employees in each division and department in the plant. The Union's position in contrast was that IBP would be allowed to change the work schedule only six weeks per year, regardless of whether only one or all divisions or departments operated on the alternative schedule.

As noted above, the prior collective bargaining agreement had provided for the scheduling and calculation of the guarantee on a Tuesday through Saturday basis. During negotiations for the agreement in question, the Union proposed to limit the days during which the guarantee could be satisfied to Monday through Friday, in an attempt to preclude IBP from shutting down the plant on Mondays, which was often necessary due to fluctuations of supply and demand in the beef marked.

IBP responded with a counterproposal that it be allowed to utilize any five consecutive days of the week, including Sundays, to satisfy the guarantee. The Union agreed to a compromise in proposing that if IBP would accept the Monday through Friday provision, it would allow IBP to revert back to the practice under the prior agreement six times each year. No explanation was made as to how the six weeks were to be counted, other than the IBP could revert back to the prior practice. This compromise was ul-

timately incorporated into the agreement as set out above.

Under the prior agreement, each employee was guaranteed thirty-six (36) hours of pay to be scheduled in any five (5) consecutive days except Sunday. In determining the days to count for purposes of applying the guarantee, IBP looked to the schedule of the division or department in which an employee worked. If an employee's division or department worked Tuesday through Saturday, the guarantee would be applied to him on that basis. The fact that another division and other employees worked Monday through Friday had no bearing on such an employee, and his guarantee would be based on the schedule his division had worked. Thus, in short, under the prior agreement the guarantee was applied strictly on an individual shift and divisional basis.

During the first year of the agreement in question, IBP utilized Tuesday through Saturday scheduling to satisfy the thirty-six (36) hour guarantee on numerous occasions, but on no more than six (6) occasions for each division within each shift. Notwithstanding the fact that no employee or division within a shift had been required for purposes of the guarantee to work a Tuesday through Saturday schedule on more than six (6) occasions, the Union filed a grievance. In that grievance it protested IBP's use of the exception on more than six (6) occasions plant-wide, and demanded that employees scheduled to work Tuesday through Saturday on April 9, 1979, and April 16, 1979, be paid as if they had been scheduled to work Monday through Friday.

As noted above, IBP's contention in the Arbitra-

tion proceeding was that the guarantee language in Article VIII, § 1, allowed it to revert to Tuesday through Saturday schedules for six (6) weeks each year for each employee or shift. The Union contended that IBP was allowed to revert to the exception six (6) times a year only on a plant-wide basis, regardless of the number of employees affected by each change.

The Arbitrator ruled on April 12, 1980, that the six (6) exceptions must operate on a plant-wide basis and thus adopted the Union's position. The key element of the Arbitrator's decision, however, was his express conclusion that what was actually involved in this dispute was a "mutual misunderstanding" between the parties and "that at the time agreement was reached, company representatives in all good faith had a subjective intention corresponding with the Company's position in this arbitration while Union representatives in equal good faith had an intention coinciding with its position."[2] Thus, the Arbitrator expressly concluded that no agreement had been reached between the parties concerning this portion of the contract.

In the face of what he had characterized as a "mutual misunderstanding," the Arbitrator proceeded to base his findings on general contract law principles stating:

> . . . The law of contracts provides a rather complex rule for resolving questions of this kind, which for purposes of this case can be paraphrased as follows: The term in dispute is to be interpreted in accordance with the meaning attached by the other, if that other

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[2]See Appendix C, Arbitrator's Decision, at pgs. C9-10.

> *did have reason to know* of the meaning attached by the first. (See *Restatement* of *Contracts, Second,* Section 227). In the case at hand, neither party had *actual knowledge* of the meaning attached by the other because there was no explanation of the exception offered by either side, other than the reference to reverting to the practice under the predecessor agreement. This reference itself was susceptible to more than one meaning and did not deal with the question of how such incidents were to be counted.
>
> After careful review of all the surrounding circumstances and the purpose of the Union in proposing the modification, the Arbitrator has come to the conclusion that the Company *should have been* aware of the Union's intention, while the Union had no good reason to expect that the Company had a different intention.

See Appendix C, Arbitrator's Decision, at pgs. C-10-11.

The District Court sustained the Arbitrator's determination holding generally that the Arbitrator could find that the liberal language supported the Union's position, and that, alternatively, there was no mutual misunderstanding between the parties, but merely conflicting positions, susceptible of arbitral resolution.

The Eighth Circuit Court of Appeals affirmed the district court's decision. The court noted that well established principle that judicial review of an arbitration award is limited to deciding whether the award draws its essence from the collective bargaining agreement, and further noted that the courts may not reweigh the merits, but rather, must only determine whether the arbitrator has exceeded his

authority, citing *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960) and *Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960). The court then simply held that the arbitrator had not exceeded his authority and affirmed the district court.

ARGUMENT

A reexamination of the Steelworker's Trilogy[1] is needed in order to clarify the permissible bounds of an arbitrator's authority.

The general principle that an arbitrator's award may be enforced by a reviewing court only insofar as it draws its essence from the collective bargaining agreement is well established. In reviewing an arbitration award, a court must not reweigh the respective parties' claims, but must determine only whether the arbitrator has exceeded his authority. See *Steelworkers v. American Manufacturing Co.*, 363 U.S. 564, 568 (1960).

Perhaps the clearest expression of the law in this area is contained in *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960):

> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair resolution of a problem. . . . Nevertheless, *an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own*

[1] *Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960), *Steelworkers v. Warrior Navigation Co.*, 363 U.S. 574 (1960), *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

> *brand of industrial justice.* He may of course look for guidance from many sources, yet *his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.*

363 U.S. at 597 (Emphasis Added)

In the instant case, the arbitrator's authority was expressly and specifically limited in the collective bargaining agreement between the parties at Article XVII, § 2 as follows:

> [T]he Arbitrators decision in the grievance shall be final and binding . . . provided he shall have no authority other than to apply the terms and conditions specifically set forth in this agreement.

(See Appendix D.)

In this instance however, as noted above, the arbitrator clearly found that there was a mutual misunderstanding between the parties and therefore, no agreement on the critical portion of the agreement in question in this dispute. In spite of this finding, the arbitrator proceeded to place a meaning on the disputed language by applying abstract principles of contract law and his own notions of industrial justice.

It would seem that a clearer case of an arbitrator exceeding his authority could not be found. Once the arbitrator found that there was a mutual misunderstanding between the parties, he clearly was without the authority to proceed further and resolve the dispute by applying general principles of contract law. Yet the reviewing courts sustained these

findings and enforced the arbitrator's determination.

This case is a prime example of why this Court must reconsider and clarify some of the principles set forth in the "Steelworkers Trilogy" cases. Specifically, more guidance from this Court is needed to enable the lower courts to more reasonably and logically determine when an arbitrator has exceeded his contractual authority, i.e., whether an arbitration award "draws its essence from a collective bargaining agreement". The current stance of the courts in granting great deference to arbitral resolution of labor disputes is an admirable one to be sure, and it encourages efficient resolution of disputes outside of the courts. However, clearer guidelines are needed to effectuate the limitations placed on the judicial enforcement of arbitration decisions, as is evidenced by this case.

CONCLUSION

For all the reasons stated in this Petition, it is respectfully submitted that a writ of certiorari should issue to review the Judgment of the Eighth Circuit (Case No. 82-1054).

Respectfully submitted,

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